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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,265	09/15/2003	Angelo V. Cuomo	33171-2020	9027
31013	7590	01/24/2006	EXAMINER	
KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/662,265	<b>Applicant(s)</b> CUOMO, ANGELO V.	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 20 and 22-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/15/03, 2/11/04, 3/21/05, 3/29/04, 11/4/05</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

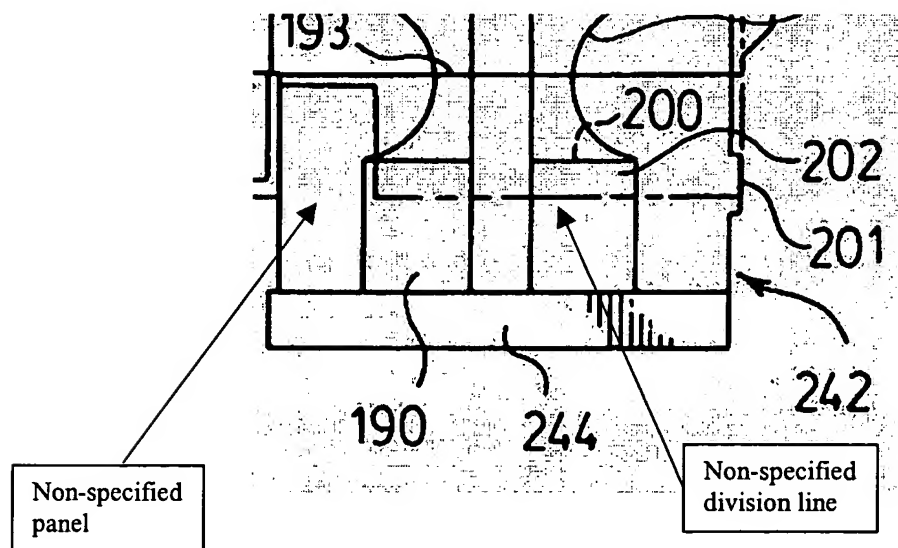
1. Applicant's election of figures 16-23 along with claims 1-14 and 21 in the reply filed on November 4, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 15, 16 and 20, 22-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 4, 2005.

### *Drawings*

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 282. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 23 show(s) modified forms of construction in the same view. It appears to the examiner that the traverse

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panel (242) is modified in some by an unspecified panel construction on the side of the pop out barriers. Also a dashed or broken line crosses a substantial portion of the transverse panel 242 this non-descript, see the figure reproduced below. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.



***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 2-8, 13, 14 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, recites the limitation "said first support panel" in line 4. There is insufficient antecedent basis for this limitation in the claim. In claim 3, "the lower edge" also has no antecedent basis. Any further reference to these terms also lacks antecedence since proper basis is lacking in the original.

In claims 4 and 7, the term "it(s)" is indefinite.

As to claim 14, said divider structure has no antecedent basis in claim 1 and it is not clear which claim 14 should depend from.

In claim 21 "the surfaces", last paragraph, has no antecedent basis.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims, 1, 2, 6-8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Maroszek (Patent no. 5,052,552). A carrier 10 is disclosed comprising a vertical panel (either of 36, 40), at least one side wall (any of 14, 16), a transverse support panel (26) and a holding structure (either of 42, 44) for holding structure for supporting the transverse support panel in a position transverse to vertical panel and holding up said transverse support panel under the load of an object placed in said receptacle upon said transverse support panel, see figure 1.

As to claim 2, a divider structure 28, 30 foldably attached to the support panel as shown in figure 4.

As to claim 6, the divider can be said to be a single element for each of the two adjacent compartments 116, 118, 120, 122.

As to claim 7, the a second vertical panel is considered panel 40 that is hinged to the first panel 36 are 38. The second vertical panel has a fold out receptacle for holding objects in it formed by panel 28, see figure 4. Which also meets the limitations of claim 8.

As to claim 13, cutouts 136, 138 form a handle

9. Claims, 1-4, 9 and 10 rejected under 35 U.S.C. 102(b) as being anticipated by Hart (Patent no. 5,695,051). A carrier C is disclosed comprising a vertical panel (20), at least one side wall (32), a transverse support panel (42) and a holding structure (either of 40, 46) for holding structure for supporting the transverse support panel in a position transverse to vertical panel and holding up said transverse support panel under the load of an object placed in said receptacle upon said transverse support panel, see figures 2 and 3.

As to claim 2-4, a divider structure 16 foldably attached, in as much as is claimed, to the support panel as shown in figure 4 by fold line 43 where the support panel and divider panel may be foldably erected into the carton configuration. The transverse panel 42 is an extension of the lower edge of vertical panel 12.

As to claim 9, three sidewalls 32, 34 and 36 with three flanges 40, 46, 40 is disclosed by Hart.

As to claim 10, linking structure is formed by the fold line between members 40 and 42.

10. Claims 1-5 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Katzenmeyer (Patent no. 3,780,906). A carrier 10 is disclosed comprising a vertical panel (35, 37), at least one side wall (22, 24), a transverse support panel (26, 31) and a holding structure (A) for holding structure for supporting the transverse support panel in a position transverse to

vertical panel and holding up said transverse support panel under the load of an object placed in said receptacle upon said transverse support panel, see figures 1.

The transverse support panel is a foldable extension of the lower edge of the vertical panel and a divider structure 50 is a foldable cutout of the lower edge of the vertical panel and the transverse support panel. This structure forms an L-shaped barrier, foldable at its farthest points, in as much as is claimed.

As to claim 14, a divider (50) is formed by a cut-out of a transverse panel portion to form a bottom 51 for receptacle support, see figures 5 and 7.

### ***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hart (Patent no. 5,695,051). The difference between claims 11, 12 and Hart resides in flanges secured to an adjacent one of said flanges at a corner and is folded diagonally along a line traversing said corner when said side wall structure is folded. However, Official Notice is taken for the use of diagonal fold lines traversing a corner of a flap to be a well known structure in this art.

It would have been obvious to one of ordinary skill in the art to modify the flap 40 of Hart by constructing flanges secured to an adjacent one of said flanges at a corner and is folded diagonally along a line traversing the corner as an expedient manner of constructing an equivalent bottom structure to one skilled in the art.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plummer (Patent no 2,405,517) in view of Korte (Patent no. 2,026,525). Plummer discloses a carrier having all of

features of claim 21 including a pair of central panels 5 hinged together at the location of cord 11 with foldable receptacles 6 positioned at the lower edge. The difference between the claimed invention and Plummer resides in graph matter displayed on one of the surfaces of the central panels.

Korte teaches that it is known to provide graphic matter, advertising, on a central panel of a carrier, see figure 1. It would have been obvious to one of ordinary skill in the art to modify Plummer by providing the central panels in view of the teaching of Korte, in order to provide advertisement, promotion or display aesthetics. As to the graphic matter provided on surfaces that face one another so that the panels can be swung apart to see the graphic matter, this is a matter of intended use of the teach of Korte which would be a matter of design choice dependent upon where one desires to place the graphics.

**REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION**

14. “In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant’s or patent owner’s reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)”, see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.



Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

### **Conclusion**

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
January 20, 2006